

<b>TO: Mail Stop 8</b> <b>Director of the U.S. Patent &amp; Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been  
 filed in the U.S. District Court Northern District of California on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. <b>CV 11-01676 MEJ</b>	DATE FILED <b>4/6/2011</b>	U.S. DISTRICT COURT <b>Northern District of California, San Francisco</b>
PLAINTIFF <b>SOFTWARE RESEARCH</b>		DEFENDANT <b>HEWLETT-PACKARD</b>
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 <b>7,231,606</b>		<b>** SEE ATTACHED COMPLAINT **</b>
2 <b>7,757,175</b>		
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK  Richard W. Wieking	(BY) DEPUTY CLERK  Mark J. Jenkins	DATE  April 7, 2011
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Upon initiation of action, mail this copy to Commissioner    Copy 3—Upon termination of action, mail this copy to Commissioner  
 Upon filing document adding patent(s), mail this copy to Commissioner    Copy 4—Case file copy

1           39.     In addition, HP has infringed and is still infringing the '175 Patent in this  
2 country, through, *inter alia*, its active inducement of others to make, use, and/or sell the  
3 systems, products and methods claimed in one or more claims of the '175 Patent. This  
4 conduct constitutes infringement under 35 U.S.C. § 271(b).

5           40.     In addition, HP has infringed and is still infringing the '175 Patent in this  
6 country through, *inter alia*, providing and selling goods and services designed for use in  
7 practicing one or more claims of the '175 Patent, where the goods and services constitute a  
8 material part of the invention and are not staple articles of commerce, and which have no use  
9 other than infringing one or more claims of the '175 Patent. HP has committed these acts  
10 with knowledge that the goods and services it provides are specially made for use in a  
11 manner that directly infringes the '175 Patent. This conduct constitutes infringement under  
12 35 U.S.C. § 271(c).  
13

14           41.     HP's infringing conduct is unlawful and willful. HP's willful conduct makes  
15 this an exceptional case as provided in 35 U.S.C. § 285.  
16

17           42.     As a result of HP's infringement, Plaintiff has been damaged, and will  
18 continue to be damaged, until HP is enjoined from further acts of infringement.

19           43.     HP will continue to infringe the '175 Patent unless enjoined by this Court.  
20 Plaintiff faces real, substantial and irreparable damage and injury of a continuing nature from  
21 HP's infringement for which Plaintiff has no adequate remedy at law.  
22

23           WHEREFORE, Plaintiff prays:

24           (a)     That this Court find HP has committed acts of patent infringement under  
25 the Patent Act, 35 U.S.C. § 271;

26           (b)     That this Court enter judgment that:

27                   (i)     The Miller Patents are valid and enforceable and;  
28

(ii) HP has willfully infringed the Miller Patents;

(c) That this Court issue a preliminary and final injunction enjoining HP, its officers, agents, servants, employees and attorneys, and any other person in active concert or participation with them, from continuing the acts herein complained of, and more particularly, that HP and such other persons be permanently enjoined and restrained from further infringing the Miller Patents;

(d) That this Court require HP to file with this Court, within thirty (30) days after entry of final judgment, a written statement under oath setting forth in detail the manner in which HP has complied with the injunction;

(e) That this Court award Plaintiff the damages to which it is entitled due to HP's patent infringement, with both pre-judgment and post-judgment interest;

(f) That HP's infringement of the Miller Patents be adjudged willful and that the damages to Plaintiff be increased by three times the amount found or assessed pursuant to 35 U.S.C. § 284;

(g) That this be adjudged an exceptional case and that Plaintiff be awarded its attorney's fees in this action pursuant to 35 U.S.C. § 285;

(h) That this Court award Plaintiff its costs and disbursements in this civil action, including reasonable attorney's fees; and

(i) That this Court grant Plaintiff such other and further relief, in law or in equity, both general and special, to which it may be entitled.

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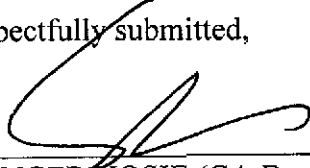
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1 Dated: April 6, 2011

2 Respectfully submitted,

3 

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15 San Francisco, CA 94111

16 (415) 247-6000 Tel.

17 (415) 247-6001 Fax

18 *Attorneys for Plaintiff*

19 *Software Research, Inc.*

**DEMAND FOR JURY TRIAL**

Plaintiff, by its undersigned attorneys, demands a trial by jury on all issues so triable.

Dated: April 6, 2011

Respectfully submitted,



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E-filing

**FILED**  
APR - 6 2011  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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25

11  
12 UNITED STATES DISTRICT COURT  
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

MEJ

14 SOFTWARE RESEARCH, INC.,

15 Plaintiff,

16 v.

17 HEWLETT-PACKARD COMPANY,

18 Defendant.  
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CV 11

1676

Case No. \_\_\_\_\_

**ORIGINAL COMPLAINT AND  
DEMAND FOR JURY TRIAL**

1 Plaintiff Software Research, Inc. ("SRI" or "Plaintiff") hereby files its complaint  
2 against Defendant Hewlett-Packard Company ("HP" or "Defendant") for patent  
3 infringement. For its complaint, Plaintiff alleges, on personal knowledge as to its own acts  
4 and on information and belief as to all other matters, as follows:

5 **PARTIES**

6 1. Software Research, Inc. is a corporation organized under the laws of the  
7 State of California, and has its principal place of business in San Francisco, California.  
8 SRI is and at all pertinent times was the assignee and owner of the patents at issue in this  
9 case.  
10

11 2. Defendant HP is incorporated under the laws of the State of Delaware and  
12 has its principal place of business in Palo Alto, California.

13 **JURISDICTION AND VENUE**

14 3. This complaint asserts a cause of action for patent infringement under the  
15 Patent Act, 35 U.S.C. § 271. This Court has subject matter jurisdiction over this matter  
16 by virtue of 28 U.S.C. § 1338(a). Venue is proper in this Court by virtue of 28 U.S.C. §  
17 1391(b) and (c) and 28 U.S.C. § 1400(b), in that SRI may be found in this district, HP has  
18 committed acts of infringement in this district, and has its operational headquarters in this  
19 district.  
20

21 4. This Court has personal jurisdiction over HP because it provides  
22 infringing products and services in the Northern District of California.  
23

24 **INTRADISTRICT ASSIGNMENT**

25 5. Pursuant to Civil LR 3-2(c), this case should be subject to district-wide  
26 assignment because it is an Intellectual Property Action.  
27  
28

1           6.       Plaintiff owns two patents, U.S. Patent No. 7,231,606 ("606 Patent"),  
2 "Method and System for Testing Websites," issued on June 12, 2007 to SRI, and U.S. Patent  
3 No. 7,757,175 ("175 Patent"), "Method and System for Testing Websites," issued on July  
4 13, 2010 to SRI. True and correct copies of the '606 Patent and the '175 Patent are attached  
5 as Exhibits "A" and "B" and are incorporated herein by reference. Plaintiff is the legal and  
6 rightful owner of the '606 Patent and the '175 Patent.

7  
8                               **STATEMENT OF THE FACTS**

9       **SRI**

10           7.       SRI was founded in 1978 by Dr. Edward Miller. Dr. Miller has a doctorate in  
11 electrical engineering and has been a voting member of the IEEE since 1962. Dr. Miller's  
12 expertise lies in digital computer systems analysis and design, with an emphasis on software  
13 functional, regression, load, performance, and stress testing.

14           8.       Dr. Miller founded SRI to develop software testing products and provide  
15 related consulting services. As an aspect of this work, SRI organized and held the premier  
16 software testing annual trade conference, here and abroad, the Quality Week/Quality Week  
17 Europe Conferences, which began in 1987 and ran consecutively for 15 years.

18           9.       Beginning in the early 1990's, SRI started development of software test  
19 products, including the widely sold and used TestWorks/Unix and TestWorks/Windows  
20 product lines. From 1999 forward, the company concentrated on developing its eValid Test  
21 enabled web browser, as described below.

22           10.       SRI remains an operating business, located in San Francisco, California. It  
23 continues to develop, test, and market test products, including its eValid test enabled web  
24 browser product. It competes directly with HP, as set out within.

25  
26  
27 ///



### **SRI's Test Enabled Web Browser Invention**

11. In the late 1990's, websites were evolving from static preconfigured pages to become rich, interactive web applications. With the advent of ecommerce, the reliability and scalability of websites became increasingly important. A popular site could be "hit" thousands of times a minute, a load level that exposes flaws and gives rise to performance issues. In the modern web, sites that malfunction or crash are expensive mistakes, and are mistakes that must be avoided.

12. The importance and complexity of modern websites gave rise to a corollary need: the need for efficient, functional website performance testing. There was an important need for software tools that could emulate user behavior, emulate heavy web traffic, and stress websites to expose design flaws and performance issues.

13. Prior to 2000, website testing tools were based on protocol-level recording. These tools recorded the HTTP request from the browser to the server and back. This approach to testing involved significant one-off manual labor, was slow and imperfect, and ill-suited for the increasingly complicated websites populating the worldwide web.

14. Appreciating this problem, in 1997, Dr. Miller began to work on finding a new method for performance testing rich, interactive websites. After significant effort and expenditure, Dr. Miller invented exactly such a new method: a method that entailed building the software test tools into a browser, and having the browser interact directly with the website, thereby performing performance, stress, and load testing efficiently, reliably, reproducibly, and quickly. Dr. Miller called this technology a "test enabled web browser," and reduced this invention to practice in SRI's eValid product.

15. Technically, SRI's product incorporates standard browsing components and overloads them with its specialized testing capabilities. When used in the Windows context,

1 the eValid product relies on the Trident Rendering Engine libraries, which are published as  
2 part of the Internet Explorer ("IE") product. The resulting program is a dedicated, but  
3 lightweight, testing enabled browser that is fully compatible with IE or other underlying  
4 browser technology.

5 16. This advantageous design provides significant testing advantages, *e.g.*:

- 6 • The eValid testing browser is lightweight and fast. It runs in native  
7 machine code and consumes little memory. A single machine, used to  
8 emulate client load, can easily run 100+ instances and deliver heavy  
9 duty load testing to web applications.
- 10 • Given its approach, the eValid browser is itself the source of events.  
11 Its compiled (native) code allows for precise synchronization of  
12 multiple events and it launches them at the web application with  
13 millisecond accuracy.
- 14 • The eValid approach supports comprehensive event logging, script  
15 editing, adaptive playback logic, full DOM access, real-time test  
16 recording, and a range of result validation methods.

17 17. SRI filed this first patent application covering the test enabled web browser  
18 invention on October 31, 2000. Ultimately, SRI received two patents, as described above, on  
19 this technology. SRI's eValid product practices the claims of its patents.

20 18. SRI continues to make and sell its eValid testing of the web browser product  
21 today. It competes, *inter alia*, with HP.

#### 22 **SRI's Disclosures To Hewlett-Packard**

23 19. In 2008, HP did not offer a test enabled web browser testing tool. Early that  
24 year, HP arranged a series of conference calls with SRI. HP told SRI that HP was interested  
25 in evaluating the SRI eValid web testing product.

26 20. In these meetings, and in subsequent detailed e-mail exchanges, SRI's Dr.  
27 Miller explained eValid functionality to HP employees, specifically: (1) Mr. Roi Carmel (HP  
28 LoadRunner Product Manager, Palo Alto, as discussed below); (2) Mr. Yrieix Garnier; (3)

1 Mr. Motti Lauzkron; (4) Mr. Kirill Mendelev; and, (5) Mr. Ilan Shafer (Chief Architect in  
2 Israel). Dr. Miller also answered detailed technical questions these HP representatives had,  
3 typically in writing.

4 21. Pursuant to these meetings, and HP's expressed interest in evaluating the  
5 eValid product, SRI provided an eValid product to HP. Beginning on April 2, 2008, various  
6 HP employees ran the eValid product and evaluated functionality in various testing  
7 scenarios.

8 22. As part of this evaluation process, HP learned and understood that SRI's  
9 eValid product was protected by one issued patent, with additional patents applied for. For  
10 example, the eValid "Software Product License Agreement – EULA," the terms of which the  
11 HP employees accepted to use the eValid product, specifically calls out SRI's issued patent  
12 as follows: "The intellectual property embodied in this software product is protected by  
13 United States Patent No. 7,231,606 (12 June, 2007) and by additional patents applied for."

14 23. After fully evaluating SRI's eValid product, HP told SRI that HP had no  
15 interest in offering a test enabled web browser product. HP then broke off discussions.

16 **HP's Infringing Goods And Services**

17 24. In September 2010, HP released what it characterized as a "completely  
18 revolutionary" testing solution for websites: its HP TruClient, part of its HP LoadRunner  
19 Software Suite. Mr. Roi Carmel, whom SRI had met with in 2008, was the HP LoadRunner  
20 Product Manager.

21 25. The HP TruClient is a test enabled web browser, and functions as does SRI's  
22 eValid preexisting product. As HP put it:

23 HP TruClient, works with HP LoadRunner as well as HP  
24 Performance Center, is an innovative browser based virtual  
25 user generator (Vugen) that supports simple web as well as  
26

modern java script-based applications. The scripting  
imaging is embedded within the browser, and behaves like  
a true browser client.

26. HP further describes its TruClient functionality as follows:

It provides interactive recording and scripting, which  
makes scripting faster. It significantly reduces script  
maintenance. UI-level recording removes the need for  
programming and correlations, enabling even the  
nontechnical business users to participate in the testing  
process. HP TruClient is completely agnostic to any  
specific framework or toolkit being used in the application  
and supports nearly all available Ajax toolkits, helping  
make testing of Web and Web 2.0 applications faster,  
easier, and more comprehensive.

27. HP makes and sells HP TruClient today. It infringes SRI's patents, and is  
precisely the product that HP previously told SRI that HP would not release.

**COUNT I**  
**(Patent Infringement; Patent '606)**

28. Plaintiff incorporates by reference the allegations of paragraphs 1 through 28  
above.

29. Plaintiff is the owner of the '606 Patent.

30. HP has infringed and is still infringing the '606 Patent by, without authority,  
consent, right or license, and in direct infringement of the '606 Patent, making, using,  
offering for sale and/or selling products using the methods and apparatus claimed in the  
patent in this country. This conduct constitutes infringement under 35 U.S.C. § 271(a).

31. In addition, HP has infringed and is still infringing the '606 Patent in this  
country, through, *inter alia*, its active inducement of others to make, use, and/or sell the  
systems, products and methods claimed in one or more claims of the '606 Patent. This  
conduct constitutes infringement under 35 U.S.C. § 271(b).

1           32.     In addition, HP has infringed and is still infringing the '606 Patent in this  
2 country through, *inter alia*, providing and selling goods and services designed for use in  
3 practicing one or more claims of the '606 Patent, where the goods and services constitute a  
4 material part of the invention and are not staple articles of commerce, and which have no use  
5 other than infringing one or more claims of the '606 Patent. HP has committed these acts  
6 with knowledge that the goods and services it provides are specially made for use in a  
7 manner that directly infringes the '606 Patent. This conduct constitutes infringement under  
8 35 U.S.C. § 271(c).  
9

10           33.     HP's infringing conduct is unlawful and willful. HP's willful conduct makes  
11 this an exceptional case as provided in 35 U.S.C. § 285.

12           34.     As a result of HP's infringement, Plaintiff has been damaged, and will  
13 continue to be damaged, until HP is enjoined from further acts of infringement.

14           35.     HP will continue to infringe the '606 Patent unless enjoined by this Court.  
15 Plaintiff faces real, substantial and irreparable damage and injury of a continuing nature from  
16 HP's infringement for which Plaintiff has no adequate remedy at law.  
17

18                               **COUNT II**  
19                               **(Patent Infringement; Patent '175)**

20           36.     Plaintiff incorporates by reference the allegations of paragraphs 1 through 28  
21 above.

22           37.     Plaintiff is the owner of the '175 Patent.

23           38.     HP has infringed and is still infringing the '175 Patent by, without authority,  
24 consent, right or license, and in direct infringement of the '175 Patent, making, using,  
25 offering for sale and/or selling products using the methods and apparatus claimed in the  
26 patent in this country. This conduct constitutes infringement under 35 U.S.C. § 271(a).  
27  
28